IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 369 of 2004 (S/B)

Dinesh Kumar Sharma
S/o late Sri D.N. Sharma
R/o H.No. 17, Regional Soil testing Lab,
Campus Rudrapur, District Udham Singh Nagar
Now posted as Asstt. Director (Soil Conservation)
Regional Office, Udham Singh Nagar

..... Petitioner

Versus

1. State of Uttaranchal
through Secretary
Agriculture & Soil Conservation,
Uttaranchal Govt., Dehradun
2. Director of Agriculture,
Uttaranchal
Pauri Camp at Dehradun.

..... Respondents

Mr. Pramod Belwal, learned counsel for the petitioners.
Mr. J.P. Joshi, learned Addl. C.S.C. for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble Prafulla C.Pant, J.

Dt: 29th March, 2005.

By means of this writ petition, the petitioner has prayed for a writ of mandamus to command the respondents to promote the petitioner w.e.f. 1st May, 1996 against the vacancy which fell vacant on 1st May, 1996 due to retirement of Sri Mohan Prakash Joshi on 30.04.1996 and of Sri Krishna Pandey on 31.05.1996, who were members of Class II Services, Section "C" (Chemistry) under the U.P. Agriculture (Group 'B') Services Rules, 1995.

2) The petitioner has stated in the writ petition that these vacancies fell in the recruitment year 1995-96, therefore, the petitioner ought to have been allotted that recruitment year for

the purpose of seniority. This error has crept in for the reason that the Director Agriculture (Hills), while recommending to the U.P. Public Service Commission (for brevity hereinafter the Commission) for considering the promotion of the petitioner under the U.P. Public Service Commission (promotion by selection procedure Rule, 1970), incorrectly wrote the year of recruitment to be 1997-98. Therefore, the appointment letter to the petitioner could be issued on 19.11.1999. had this fact been brought to the notice of the Commission, that these vacancies are of the recruitment year 1995-96, the Commission would have given promotion to the petitioner w.e.f. 1st May 1996, when the first vacancy fell under the quota to which the petitioner belongs. The petitioner made several representations to this effect which were lying un-disposed of, hence this writ petition.

3) On 25.11.2004, a Division Bench of this High Court directed the respondents to decide the representation of the petitioner dated 27.05.2002 (copy annexed as Annexure-8 to the writ petition) by a speaking and reasoned order. A counter affidavit has been filed with which the order dated 1st October, 2002 has been annexed as Annexure C.A. 1, whereby the representation of the petitioner dated 27.05.2002 had already been disposed of. The reasons there for, stated in para 2 of the order, are reproduced as under:-

> '' श्री शर्मा के प्रत्यावेदन के संबंध में यह कहना है कि श्री शर्मा, जिनकी प्रोन्नति उत्तर प्रदेश लोक सेवा आयोग सपरामर्श चयनोन्नति (प्रकिया) नियमावली, 1970 के प्रासंगिक प्राविधानों के अनुसार लोक सेवा आयोग, उत्त्र प्रदेश, इलाहाबाद के परामर्शानुसार चयन वर्प 1997–98 कि रिक्तियों में कार्यालय झाप संख्या 5653, दिनांक 19–11–1999 द्वारा की गई है, में चयन वर्प 1995–96 से भी की जाती है तो श्री शर्मा की प्रोन्नति चयन वर्ष 1995–96 से भी की जाती है तो श्री शर्मा की प्रोन्नति आदेश में मौलिक नियुक्ति का आदेश वही रहेगा, जिस तिथि को आदेश निर्गत हुआ है। चूंकि श्री शर्मा की

प्रोन्नति चयन वर्प 1997–98 की रिक्ति में की गई है और दिनांक 19–11–1999 को प्रोन्नित आदेश निर्गत किया गया है, अतः जिस तिथि को श्री शर्मा के प्रोन्नति के आदेश निर्गत किये गये है, वही तिथि श्री शर्मा की मौलिक नियुक्ति की तिथि रहेगी। जहां तक श्री शर्मा को चयन वर्प 1995–96 में चयनित कराने के पश्चात समयमान वेतनमान/ सलेक्शन ग्रेड में उच्च वेतनमान का लाभ अनुमन्य होने का प्रश्न है, समयमान वेतनमान/सलेक्शन ग्रेड का लाभ प्रोन्नति पद से निर्धारित समय तक उस पद की अर्हकारी सेवा पुर्ण करने पर ही अनेमन्य होता है। प्रोन्नति वेतनमान दिये जाने का निर्धारण प्रोन्नति की तिथि के दिनांक से निर्धारित सेवा पूर्ण करने पर देय होता है न कि पद के रिक्ति के फलस्वरूप किसी चयन वर्प की रिक्ति में चयनित किये जाने से।''

4) From the perusal fo the aforesaid order, it is clear that the authority has not applied its mind on the facts of the case as stated by the petitioner, in the representation, and has rejected the representation on the ground that since the appointment letter was issued to the petitioner on 19.11.1999, therefore, he is entitled to his seniority from that date. Even if the recruitment year is changed the order of appointment cannot be made with retrospective effect. The authority has failed to appreciate that if the fact of vacancy being accrued in the recruitment year 1995-96 i.e. on 1st May, 1996 and second vacancy on 1st June 1996 had come to the knowledge of the Commission, the Commission could have given the promotion to the petitioner w.e.f. these dates, as the petitioner was entitled for the same and the Commission has found him suitable, which is evident from the promotion order dated 19.11.1999. Therefore, this could have consequently affected the consequential benefits available to the petitioner had his promotion being made w.e.f the date of promotion of falling of vacancy. Therefore, the order dated 1st October, 2002 suffers from non application of mind and is hereby liable to be ignored.

5) The fact that the vacancy had fallen on 1st May, 1996 and 1st June, 1996 in the recruitment year 1995-1996 are not disputed by the respondents. The petitioner cannot be made to suffer on account of delay in recommendation by the Director of Agriculture for promotion of the petitioner. The petitioner cannot be held responsible and cannot be made to suffer, as such became entitled to be considered for promotion on 1st May, 1996. Therefore, the Government is directed to re-consider the matter and send it back to the Commission for appropriate orders suitable in the facts and circumstances of the case. Subject to the above, the writ petition is disposed of finally.

(Prafulla C.Pant, J.) (P.C. Verma, J.)

Dt. 29th March, 2005.
H. Negi